89-1256

Supreme Court, U.S.
FILED
FEB 1 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner.

vs

G. BRUCE McFADDEN, Individually and as
DIRECTOR, UNIVERSITY OF MD. HOSPITAL,
STATE OF MARYLAND
22 S. Greene Street
Baltimore, MD 21201

Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

CURTIS L. WRENN, PRO SE
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-7817

QUESTIONS PRESENTED FOR REVIEW

This is a case in which the repondents obtained dismissal of petitioner's claims at the pre-trial level. If this Court grants the petition, it will have to decide whether the rights of the petitioner were abridged by the lower courts' decisions. More specifically:

1. Whether the District Court abused its discretion in denying the plaintiff's motion to amend his complaint which is currently pending in the district court as 82-HAR-2044.

2. Whether the denial of plaintiff's motion to amend his complaint, without a hearing, is a violation of the Fourteenth Amendment.

3. Whether the decision to deny plaintiff's motion to amend his complaint is a "final decision" which is appealable, in that the denial of the motion to amend forecloses the petitioner's rights to seek a decision on the merits of his complaint.

4. Whether under the theory of "continuing violation", a charge filed with the EEOC on May 30, 1978 is timely when it is based on the petitioner complaining to his employer on June 27, 1977 concerning discriminatory wages, that he was fired on July 11, 1977 in response to his request for comparable wages, and that he was maintained in that discriminatory wage system until his last day of employment on July 1, 1978.

5. Whether the Court of Appeals abused its discretion and erred as a matter of law when it ruled that the petitioner's Title VI claim was invalidated by the Maryland's statute of limitations; that his title VII discharge claim was not timely filed with the EEOC; and that his retaliation claim must be dismissed since he did not exhaust the required administrative remedies.

6. Whether the lower courts abused their discretion by refusing to render a decision on the petitioner's constitutional claims.

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JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under Title 28, United States Code, Sections 1254(1), 1651 and 1915. This Court is being asked to review the continuing denial of equal justice to petitioner by the federal courts.

Jurisdiction is also invoked under the Constitution and laws of the United States, including but not limited to the First and Fourteenth Amendments.

This Court is being asked to review the decisions of the District Court and the Court of Appeals, both courts having made decisions against the petitioner without considering the facts and applicable case-law.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment I:

> Congress shall make no law ...
>
> abridging the freedom of speech ...;

or the right of the people peaceably ... to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV:

Nor deny to any person within its jurisdiction the equal protection of the laws.

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OPINION BELOW

1. The petitioner, on or about June 27, 1977, while still employed by the University of Maryland Hospital and maintained in a discriminatory wage system (Negroid Americans paid less than caucasians doing similar work), submitted a written request for a salary adjustment. The request was denied on July 11, 1977. On the same date the employer advised the petitioner that his employment would be terminated. See Appendix J.

2. On March 3, 1978 the petitioner contacted the U.S. Department of Health, Education and Welfare concerning filing a

charge of unlawful employment practice. Using DHEW's form the petitioner filed a charge of employment discrimination under Titles VI and VII with DHEW and the EEOC. The charge was filed on or about May 27, 1978. See Appendix K.

3. On or about June 23, 1982 the EEOC rendered its decision of "reasonable cause to believe that the allegation (Respondent denied the charging party comparable wages for comparable work because of his race) is true." See Appendix L.

4. Petitioner filed his complaint in the District Court on July 20, 1982 as 82-HAR-2044. The complaint was amended on or about September 9, 1982. See Appendix M.

5. On or about May 22, 1985 the district court dismissed all claims. See Appendix N.

6. The decision of the district court was appealed to the Fourth Circuit. The appeal was denied. See Appendix O.

STATEMENT OF THE CASE

1. This case involves the petitioner's continuing efforts to bring to an end the nationwide efforts by the United States Department of Health and Human Services, the State of Maryland and other private and public employers to deny him employment in his chosen profession of hospital and health care administration.

2. The specific issue before this Court is the district court's denial of the petitioner's motion to amend his complaint (82-HAR-2044). The issues in the case have been pending for almost thirteen (13) years.

3. This Court is being asked to decide whether the denial of the motion to amend is a "final order" which thereby authorizes a complaining person to file an appeal.

4. This Court is also being asked to decide whether, based on the facts in the case, the petitioner has a constitutional right to a hearing in connection with his motion to amend.

5. This Court is being asked to determine when the limitation period commences for filing a charge with the EEOC. More specifically, in an employment termination complaint, when an employee asks his employer on June 27, 1977 for comparable wages, is informed on July 11, 1977 that his request is denied and that his employment is terminated, and he is continued in that discriminatory wage system until July 11, 1978, when does the limitation period commences to run?

6. Petitioner's core complaint in this case is that he and other similarly situated Negroid Americans were unlawfully paid less than caucasians doing similarly work. And that he was exericising his First Amendment right of free speech when he requested a salary adjustment, and that such rights are "protected" by Titles VI and VII under the "opposition clause". Moreover, that as long as he was paid less than caucasians the time

for filing a charge of unlawful employment discrimination did not begin to run

REASONS FOR GRANTING WRIT

1. This petition for writ of certiorari should be granted for the reasons set forth in App F, G and I.

2. The District Court abused its discretion when it denied the petitioner's motion to amend his complaint. The denial of the motion to amend was a clear violation of Rule 15(A) of the Federal Rules of Civil Procedure. As stated by this Court in Foman v. Davis, 371 U.S. 178, 9 L.E. 2d, 222, 83 S. Ct. 227 (1962), construing that rule of procedure:

> "If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason -- such as undue delay, bad faith or dilatory motive on the part of the movant -- the leave sought should, as the rules require, be "freely given".

Based on the facts in the case the motion to amend should have been granted to permit the plaintiff to obtain a decision on the merits of his complaint.. Moreover, justice requires that after twelve years the issues in this case be tried, rather than having a continuing series of appeals to the court of appeals and this Court. Petitioner submits that the denial of his motion to amend was a "final order" which foreclosed any and all opportunities to prove his case of pattern and practice systemic discrimination by the State of Maryland against Negroid employees. That is, the petitioner's core complaint is that he and other similarly situated Negroid citizens were denied wages similarly to that of Caucasians doing similar work.

3. The denial of the petitioner's motion for summary judgment on his single remaining claim in the district court (App G and D), allegedly because "This motion is untimely because, to date, no discovery has been taken", is clearly erroneous and is a

clear abuse of discretion in that the decision is a clear violation of Rule 56(e) of the Federal Rules of Civil Procedure. The Rule provides that when a motion for summary judgment is made and the adverse party does not so respond, summary judgment shall be entered against the adverse party. In this case although the district court had ordered the defendants to respond to the plaintiff's motion for summary judgment, it did not enforce its order. Instead it dismissed the plaintiff's motion. The decision in this case falls within the "clearly erroneous standards" articulated by this Court. See, e.g., Anderson v. City of Bessemer City, 470, U.S. - (1985); Pullman-Standard v. Swint, 456 U.S. 273 (1982); United States v. United States Gypsum co., 333 U.S. 364 (1948).

4. The petitioner filed his motion to amend to cure the defects derived from a clearly erroneous decision of the lower courts to dismiss his claims under Titles VI

and VII of the Civil Rights Act of 1964, as amended. More importantly, the decision of the lower courts was a clear abuse of discretion and was contrary to decisions of this Court and the other courts of appeals. More specifically:

a. Federal Court Jurisdiction. The decision of the lower to dismiss the petitioner's Title VI discrimination claim and his Title VII discharge and retaliation claims, allegedly because of a lack of jurisdiction, contravenes this Court's decision in Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 392-98, 102 S. Ct. 1127, 1131-35, 71 L.Ed.2d 234 (1982). In Zipes this Court held that "the timely filing of a complaint with the EEOC is not a jurisdictional prerequisite to bringing suit in federal court under Title VII." The rationale of Zipes has been accepted apparently by all the other circuits EXCEPT the Fourth Circuit. See, e.g., Pinkard v.

Pullman-Standard, 678 F.2d 1211, 1215-19 (5th Cir. 1982) (per curiam), cert. denied. -U.S.-, 103 S. Ct. 729, 74 L.Ed.2d 954 (1983); Gordon v. National Youth Work Alliance, 675 F.2d 356, 359-60 (D.C. 1982); Thomas v. KATV Channel 7, 692 F.2d 548, 549 n.2 (8th Cir. 1982) (per curiam), cert. denied, -U.S.-, 103 S. Ct. 1431, 75 L.Ed.2d 790 (1983).

b. The dismissal of the petitioner's motion to amend his complaint and the prior dismissal of his Title VI claim allegedly because of the statute of limitations of the State of Maryland, was clearly erroneous and a clear abuse of discretion. This is especially true since the Title VI administrative claim was still pending before the U.S. Department of Health and Human Services at the time both lower courts rendered their original decision. The lower courts failed to consider that "A state law is not "appropriate"if it fails to take into

account practicalities that are involved in litigating federal civil rights claims and policies ...". See, e.g., Burnett v. Grattan, 468 U.S. -, 82 L.Ed.2d 36, 104 S. Ct. See also, Cannon v. University of Chicago, 441 U.S. 677, 730, 99 S. Ct. 1946, 1974-1975, 60 L.Ed.2d 560 (1979). The lower courts also denied the petitioner his right to demonstrate that the statute of limitations should be equitably extended based on the facts in the case. See, e.g., Cooper v. Bell, (CA 9th Cir. 1980), 628 F.2d 1208, 1209.

c. The theory of "continuing violation." A legion of court cases hold that if a violation is continuing in nature, then the limitation period for filing a charge concerning that violation does not apply, but more specifically, it does not begin to run. Also, where there exists, as in this case, current discrimination or a continuous chain of discriminatory acts, the courts have treated the entire course of

conduct as a continuing statutory violation. See, e.g., United Air Lines, Inc. v. Evans, 431 U.S. 553, 558, 97 S.Ct. 1885, 1889, 52 L.Ed.2d 571 (1977). See also, Delaware State College v. Ricks, 449 U.S. 250, 101 S. Ct. 498, 66 L.Ed.2d 431 (1980); Macklin v. Spector Freight Systems, Inc., 156 U.S. App. D.C. 69, 77, 478 F.2d 979, 987 (1973); Moore v. Sunbeam Corp., 459 F.2d 811, 828 (7th Cir. 1972). In that connection, the petitioner maintains that the State of Maryland maintained a discriminatory wage system from at least June 1977 to July 1978. That is, the State continued to maintain that discriminatory system until after the petitioner filed his charge of discrimination under Titles VI and VII on about May 30, 1978.

d. Timely charge filing. The lower court decision that the petitioner did not exhaust the required administrative remedies and/or did not file a timely charge under Titles VI and VII was a clear abuse of

discretion, in that the decision was not supported by the facts of record and applicable case law. The petitioner submits that the lower courts should have applied the equitable principles of Zipes. In this case the petitioner has alleged that his discharge by the State of Maryland was racially motivated, in that the State discriminated against Blacks in general by denying them equal pay for equal work, and that he was fired because he opposed the discriminatory wage system. Of particular importance in this case is the long held principles that "the rights of private parties must not be barred by procedural technicalities." See, e.g., Wetzel v. Liberty Mutual Insurance Co., 511 F.2d 199, 202 (3d Cir. 1975). See also, Egelston v. State University College at Geneseo, 535 F.2d 752 (2d Cir. 1976) for the holding that "Were we to interpret the statute's pro-

cedural prerequisites stringently, the ultimate result would be to shield illegal discrimination from the reach of the Act."

e. Petitioner's retaliation claim. The dismissal of petitioner's retaliation claim, allegedly because he failed to exhaust the required administrative remedies, was clearly erroneous and an abuse of discretion. In a retaliation case the complainant is not required to exhaust the administrative remedies. See, e.g., Gupta v. East Texas State University, 654 F.2d 411, 414 (5th Cir. 1981).

3. The petitioner's amended complaint was also his attempt to have the lower courts render a decision on his two constitutioinal claims. Although the petitioner alleged that the respondents had violated his rights under the First and Fourteenth Amendments, the lower courts did not address these constitutional claims. The petitioner has alleged in this case that the respondents retaliated against him for

exercising his First Amendment right of free speech when he requested equal pay for equal work. See e.g., Givhan v. Western Line Consol. School, 99 S. Ct. 693 (1979); Mt. Healthy City Bd. of Ed. v. Doyle, 429 U.S. 274, 97 S.Ct. 568, 50 L.Ed.2d 471. The petitioner also alleged that he was unlawfully denied a procedural due process hearing, in that he was not given a reason for his firing nor was he affored a hearing. See, e.g., Board of Regents v. Roth, 408 U.S. 92 S. Ct. 2694, 33 L.Ed.2d 570.

CONCLUSION

The lower courts' decisions to deny petitioner's motion to amend, his claims under the First and Fourteenth Amendments, and Titles VI and VII were clearly erroneous and a clear abuse of discretion, in that the decisions are not supported by any facts and decisions of this Court or the other circuits. Thus, the decisions are contrary to mandates of Congress and applicable

statutes, and as such this case falls within the teaching of this Court in Pullman-Standard.

The decisions of the lower courts are contrary to the Constitution and laws of the United States, as interpreted by this Court and courts in the other circuits.

Based on the foregoing, the Petition for Writ of Certiorari should be granted, and the decision denying the petitioner's request to amend his complaint reversed.

Respectfully submitted,

Curtis L. Wrenn, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-7817

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing petition for writ of certiorari was mailed to The Attorney General, State of Maryland, The Munsey Building, 6th Floor, Seven North Calvert Street, Baltimore, MD 21202, via certified mail, P382545083, this 31st day of January, 1990.

Curtis L. Wrenn

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

NO_____

CURTIS L. WRENN
P. O. Box 203
Fort Drum, NY 13603,

Petitioner,

vs

G. BRUCE McFADDEN, Individually and as
DIRECTOR, UNIVERSITY OF MD. HOSPITAL,
STATE OF MARYLAND
22 S. Greene Street
Baltimore, MD 21201

Respondents,

PETITIONER'S APPENDIXES

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UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 89-2121

CURTIS L. WRENN, Individually and on behalf of all others similarly situated

Plaintiff - Appellant

v.

G. BRUCE MCFADDEN, Individually and as Director of the University of Maryland Hospital; ALBIN O. KUHN, Individually and as Chancellor of the University of Maryland at Baltimore; WILSON H. ELKINS, Individually and as President of the University of Maryland; JOHN S. TOLL, Individually and as President of the University of Maryland; BLAIR LEE, III, Individually and as Acting Governor of the State of Maryland; B. HERBERT BROWN, Individually and as Chairman of the Board of Regents of the University of Maryland at Baltimore; DONALD W. O'CONNELL, Individually and as Vice President for General Administration of the University of Maryland; THE UNIVERSITY OF MARYLAND HOSPITAL; UNIVERSITY OF MARYLAND; STATE OF MARYLAND

Defendants - Appellees

On Petition for Rehearing with Suggestion for Rehearing In Banc

---

The appellant's petition for rehearing and suggestion for rehearing in banc, and motion for leave to file petition out of time were submitted to

this Court. As no member of the Court requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is on the opinion that it should be denied,

IT IS ORDERED that the motion for leave to file petition out of time is granted and the petition for rehearing and suggestion for rehearing in banc are denied.

Entered at the direction of Judge Hall with the concurrence of Judge Wilkinson and Judge Wilkins.

For the Court,

JOHN M. GREACEN
CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CURTIS L. WRENN,

Plaintiff-Appellant,

vs Case No. 89-2121

G. BRUCE MCFADDEN, ET AL.,

Defendants-Appellees.

PETITION FOR REHEARING AND/OR IN BANC CONSIDERATION

COMES NOW THE APPELLANT to ask the Court to reconsider its decision of October 4, 1989 on the grounds that the Court has misapprehended the facts in the case and/or misapplied the laws governing employment discrimination. Moreover, the decision is in conflict with other decisions of this Court and is contrary to decisions of the U.S. Supreme Court.

1. This case centers around the clearly erroneous findings of facts and an erroneous interpretation of the law by the United States District Court. If the decision of October 4 is allowed to stand it will contravene prior decisions of this Court and the Supreme Court of the United States.

2. This case concerns whether the district court and this Court erred in denying petitioner's motion to amend his complaint now pending in the district court.

3. The decision of the district court is inexplicably not based on the facts of record in this case. The district court apparently gave NO weight to the plaintiff's EEOC charge filing which clearly demonstrated that the charge was timely filed and that he had attempted to exhaust his administrative remedies in connection with his retaliation claim. In addition the district court apparently gave no weight to the fact that the plaintiff had timely filed his Title VI charge and had exhausted the required administrative remedies.

I. INTRODUCTION

1. The purpose of this petition for rehearing is to demonstrate that the district court misapprehended the facts and misapplied the law to the facts it did apprehend in this and prior related cases filed by the petitioner in this case. As such

this case falls within the teaching of Pullman Standard v. Swint, 456 U.S. 273, 287-90, 102 S. Ct. 1781, 1789-91, 72 L.Ed. 2d 66 (1982), in that the district court committed reversible error when it failed to consider relevant admissible evidence. See also, United States v. United States Gypsum Co., 333 U.S. 364 (1948).

2. A review of the following facts will demonstrate that the courts have failed to apply prior decisions they have rendered to cases filed by the petitioner:

a. Exhibit #1. The petitioner filed a charge of unlawful employment discrimination under Titles VI and VII, and alleged, among other things, that the employer "has an institutionalized practice of paying Blacks and females less than white males, for comparable work." (Page 5).

b. Exhibit #2. The EEOC acknowledged that the petitioner filed a retaliation claim by stating "Further, a letter from Charging Party to his former employer shows that he protested the action as retaliatory . . ." (Page 3).

c. Exhibit #3. Although the petitioner's charge (Exhibit #1) was filed May 1978 it was not until January 1986 that his charge was processed by the responsible federal agency.

d. Exhibit #4. The decision of the district court contravened prior decisions of that court.

e. Exhibit #5. The decision of this Court contravened priors decisions of this Court and the United States Supreme Court.

II. ARGUMENT

1. The petitioner should have been permitted to amend his complaint because it would avoid future amendments and further litigations. Moreover, the amendment would avoid needless expenses.

2. The petitioner's core complaint centers around his allegation that his Title VII claims (discharge and retaliation) and his Title VI claim were timely filed with the responsible federal agency and/or that he had exhausted the required administrative remedies. The decisions in this and

related cases clearly demonstrate that they were in conflict with the following decisions:

a. McAdoo v. John S. Toll, 591 F. Supp. 1399 (USDC DC of MD)(1984) ("naming requirement" in a Title VII charge).

b. Gairola v. Commonwealth of Virginia Department of General Services, 753 F.2d 1281 (CA 4th Cir 1985) (Title VII discharge claim); Curl v. Reavis, 740 F.2d 1323 (CA 4th Cir 1984) (retaliation for exercise of constitutional rights); and AT & T Technologies, Inc. 731 F.2d 175 (CA 4th Cir 1984) (continuing violation based on a present violation).

c. United Air Lines, Inc. v. Evans, 431 U.S. 553, 558, 97 S. Ct. 1885, 1889, 52 L. Ed.2d 571 (1977) and Delaware State College v. Ricks, 449 U.S. 250 (1980) (continuing violation based on a current violation).

CONCLUSION

The Court should reconsider its decision because if the decision is allowed to stand it would provide an additional basis for employers throughout America

to make employment decisions which tend to deprive the plaintiff, and other similarly situated individuals, of equal employment opportunity solely because of race (Negroid) and/or retaliation (for opposition to unlawful employment practices).

This Court should remand this case to the district court with instructions that the petitioner should be permitted to amend his complaint. The reason being the district court's account of the evidence is not plausible in light of the record viewed in its entirety. In the event this Court declines to remand, the plaintiff-appellant asks that the court directs and/or requests a Special Prosecutor and/or Department of Justice and/or an appropriate committee of the United States Congress to conduct an investigation and/or hold public hearings to determine whether he (the plaintiff) has been denied equal employment opportunity because of his race and/or retaliation, as a result of the concerted actions by agencies of the United States Government, including but not limited to the Departments of Justice and Health and Human

Services, and the State of Maryland.

Respectfully submitted,

/s/Curtis L. Wrenn, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

89-2121

CURTIS L. WRENN, Individually
and on behalf of all others
similarly situated

Plaintiff - Appellant

v.

G. BRUCE MCFADDEN, Individually and as Director of the University of Maryland Hospital; ALBIN O. KUHN, Individually and as Chancellor of the University of Maryland at Baltimore; WILSON H. ELKINS, Individually and as President of the University of Maryland; JOHN S. TOLL, Individually and as President of the University of Maryland; BLAIR LEE, III, Individually and as Acting Governor of the State of Maryland; B. HERBERT BROWN, Individually and as Chairman of the Board of Regents of the University of Maryland at Baltimore; DONALD W. O'CONNELL, Individually and as Vice President for General Administration of the University of Maryland; THE UNIVERSITY OF MARYLAND HOSPITAL; UNIVERSITY OF MARYLAND; STATE OF MARYLAND

Defendants - Appellees

Appeal from the United States District Court for the District of Maryland, at Baltimore. John R. Hargrove, District Judge. (C/A No. 82-2044-HAR)

Submitted: August 29, 1989
Decided: October 4, 1989

Before HALL, WILKINSON, and WILKINS, Circuit Judges.

Curtis L. Wrenn, Appellant Pro Se. Robert Bolon Barnhouse (PIPER & MARBURY) for Appellees.

PER CURIAM:

Curtis L. Wrenn appeals the district court's denial of his motion to amend his complaint and motion for summary judgment. We dismiss the appeal for lack of jurisdiction.

Under 28 U.S.C. Subsection 1291 this Court has jurisdiction over appeals from final orders. A final order is one which disposes of all issues in dispute as to all parties. It "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States, 324 U.S. 229, 233 (1945).

As the order appealed from is not a final order, it is not appealable under 28 U.S.C. Subsection 1291. The district court has not directed entry of final judgment as to particular claims or parties under Fed. R. Civ. P. 54(b), nor is the order appealable under the provisions of 28 U.S.C. Subsection 1292. Finally, the order is not appealable as a collateral order under Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949). Finding no basis for appellant

jurisdiction, we dismiss the appeal as interlocutory. We deny the appellee's request for attorney's fees but warn Wrenn that if he continues to file interlocutory appeals without the district court's certification pursuant to 28 U.S.C. Subsection 1292, this Court may grant a motion for sanctions on appeal. We dispense with oral argument because the dispositive issues have been decided authoritatively.

DISMISSED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

*

Curtis L. Wrenn, *
Plaintiff,
*
CIVIL ACTION NO.
v. * HAR 82-2044
*
G. Bruce McFadden,
Defendant. *
*

O R D E R

Curtis L. Wrenn, proceeding pro se, brought this action against the University of Maryland Hospital, the University of Maryland, the state of Maryland and seven other defendants in their individual and official capacities, alleging claims under Title VII, 42 U.S.C. §2000e; Title VI, 42 U.S.C. §2000d; the Equal Pay Act, 29 U.S.C. §206(d); and 42 U.S.C. §1981 and §1983. This Court dismissed with prejudice Mr. Wrenn's First Amended Complaint by Order dated May 22, 1985. The Fourth Circuit affirmed in part, vacated in part and remanded this Court's decision by Order dated September 6, 1988. In essence, the Fourth Circuit affirmed this Court's dismissal of the §1981 and §1983 claims, the Title

VI claim, the Title VII wrongful termination and retaliation claims, and the dismissal of all defendants except G. Bruce McFadden. The Title VII wage discrimination claim was remanded for consideration.

Currently pending before this Court is Mr. Wrenn's Motions for Leave to Amend Complaint and for Summary Judgment. A status conference on these issues was held in court on May 26, 1989.

In his proposed Amended Complaint, Mr. Wrenn attempts to revive his claims under Titles VI and VII and for wrongful discharge and retaliation, claims that the Fourth Circuit declared were properly dismissed. Thus, Mr. Wrenn's Motion for Leave to Amend Complaint must be denied. Mr. Wrenn also moves for summary judgment on the issue of wage discrimination. This motion is untimely because, to date, no discovery has been taken.

Pursuant to the September 6, 1988, Fourth Circuit Order and for reasons stated on the record in open court on May 26, 1989, IT IS this 31st day of May, 1989, by the United States District Court for the

District of Maryland, hereby ORDERED:

1. That Plaintiff's Motion for Leave to Amend Complaint BE, and the same hereby IS, DENIED.

2. That Plaintiff's Motion for Summary Judgment BE, and the same hereby IS, DENIED.

3. That the Clerk of the Court mail copies of this Order to all parties of record.

/s/John R. Hargrove

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN, *

Plaintiff *

v. * CIVIL ACTION
NO. HAR-82-2044

G. BRUCE McFADDEN, et al., *

Defendants *

* * * * * * *

ORDER

The Court having considered the letter of defendants' counsel to the Court dated March 10, 1989, requesting that defendants' time to respond to plaintiff's Motion for Summary Judgment not begin to run until after a status conference is held, and the Court having considered the matters raised in plaintiff's letter to the Court dated March 15, 1989, and the Court having determined to schedule a status conference in this matter, it is this 22nd day of March, 1989,

ORDERED, that the defendants' response to the plaintiff's Motion For Summary Judgment shall be filed within 14 days after the status conference is

held in this case.

ORDERED, further, that the Clerk shall send copies of this Order to the Plaintiff and to counsel for the defendants

/s/John R. Hargrove
United States District Judge

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

CURTIS L. WRENN,

Plaintiff-Appellant

vs

G. BRUCE McFADDEN, ET AL.,

Defendants-Appellees.

INFORMAL BRIEF OF PLAINTIFF-APPELLANT

1. Did the district court fail to consider important grounds for relief. (Continued).

(1) The district court held that the plaintiff did not exhaust his retaliation administrative remedies under Title VII or his Title VI remedies. The court reached that conclusion despite: (1) a timely charge of retaliation being filed (Exhibit 1, esp. p. 5) with the Equal Employment Opportunity Commission (EEOC) and the U. S. Department of Health and Human Services (DHHS); (2) that EEOC acknowledged the retaliation claim (Ex. 2, p. 3), and (3) the Supreme Court had decided that "Filing of timely charge with Equal Employment Opportunity Commission, held not jurisdictional prerequisite to suit under Title VII . . .". See Zipes v. Trans

World Airlines, Inc., 455 U.S. 385, 102 S.Ct. 1127, 71 L.Ed.2d 234 (1982).

(2) The district court also ruled that the plaintiff's Title VII discharge claim was not timely. The court apparently ignored the fact that the plaintiff's core grievance is that he was maintained in a discriminatory wage system (i.e., as a Negroid citizen he was paid less than similarly situated whites) from at least June 27, 1977 to July 1, 1978. The district court also ignored the fact that the plaintiff filed his charge with the EEOC on or about May 30, 1978 (Ex. 1 p. 1) OR at least one month prior to his discharge date and while still being paid less than white males doing similar work. Thus, the district court failed to apply the law governing "continuing violation" in this case as it has done in other similar cases. That is, the district court ignored decisions rendered in that same court in other similar cases, as well as ignoring decisions of this Court and other courts of appeals, and the Supreme Court of the United States. See, e.g., Thornton v. Chrysler Corporation, Civ.

No. K-82-3320, 581 F. Supp. 86 (U.S.D.C. D. MD 1983) (where the court used the Zipes decision as a basis for rendering its decision); Citicorp Person-to-Person Financial Corp. v. Brazell, 658 F.2d 232, 234 (4th Cir. 1981) (The timely filing of an administrative complaint and exhaustion of administrative remedies do not involve the Court's subject matter jurisdiction.); and Zipes. Also see, Soble v. University of Maryland, Civ. A. No. M-83-290, 572 F. Supp. 1509, (U.S.D.C. D. MD) (Where allegedly discriminatory employment practice has continuously affected the complaining employee and is continuing, time limits on the filing of an EEOC charge do not run as long as the discrimination continues); Wilson v. Allied Chemical Corp., Civ. A. No. 76-0622-R, 456 F. Supp. 249, (U.S.D.C., ED VA, 1978). Also see Exhibit 17.

2. Did the district court incorrectly decide the facts? (Continued)

(1) The district court apparently ignored the facts in this case. The facts, for the purpose of this appeal, are demonstrated by the Complaint (Docket Sheet, NR 1 of Vol 1 & 2), First Amended

Complaint (NR 7), Response of Plaintiff to Motion of Defendant to Dismiss (NR 9), Motion of Plaintiff for leave of court to file the within Motion for Summary Judgment in his favor (NR 30), Motion of Plaintiff for leave to amend complaint (NR 34), and the incorporated exhibits. See also Exhibits 1-6, and 10-14.

(2) Of particular importance in this case is the fact that the plaintiff attempted to exhaust his Title VI and VII administrative remedies by filing his administrative charge with the responsible Federal agency. It is clear from page 3 of Exhibit 2 that the EEOC acknowledged plaintiff's retaliation claim. What is not clear is the EEOC's disposition of that claim. Therefore, the plaintiff should not be held responsible for the EEOC's actions and/or inactions. See, e.g., Gifford v. Atchison, Topeka and Santa Fe Ry Co., (CA Cal 1982), 685 F. 2d 1149, where the court held "Ordinarily, if EEOC retains control over charge of employment discrimination, private plaintiff will not be charged with its mistakes."

3. Do you think the district court applied the

wrong law?
If so, what law do you want applied?
(Continued)

(1) Jurisdiction. The district court's jurisdiction in a Title VII and/or Title VI lawsuit does not depend on the action of the EEOC or DHHS. That is, the court's jurisdiction is not determined by the filing of a charge or the exhaustion of administrative remedies but rather on the law as interpreted by the Supreme Court. See Zipes.

(2) Pattern and Practice. Plaintiff alleged that the defendants had a "pattern or practice" of paying Blacks and females less than white males. As such the charge of pattern and practice (page 5 of Ex. 1) is not bound by the 180 day limitation period as long as the pattern and practice complained of is continuing. That is, but for his race the plaintiff's request for pay adjustment would not have been denied. Also, but for his race he would not have been fired for requesting a pay adjustment. (This Court has already held in this case (Ex. 9) that "each paycheck" constitutes a separate and "continuing" violation. See, e.g., Jewet v.

International Telephone & Telegraph Corp., 653 F.2d 89, 91-91 (3d Cir.) cert. denied, 454 U.S. 969, 102 S.Ct 515, 70 L.Ed.2d 386(1981), where the Third Circuit stated that "suits may be brought by victims of one or more discriminatory acts occurring before the limitations period, so long as the plaintiff establishes that the offending practice is an ongoing one." See also Crocker v. Boeing Co., 662 F.2d 975, 990 (3d Cir. 1981) (in banc) (critical question is existence of present violation"). Again, this Court has already established the existence of a "present violation." See also, Williams v. Norfolk & Western Railway Co., 530 F.2d 539 (4th Cir. 1975).

(3) First Amendment. The plaintiff has maintained that he was denied his First Amendment right to disclose and oppose the improprieties of the University of Maryland Hospital's practice of paying blacks and females less than white males doing similar work. The deprivation alleged in the case results from defendants' retaliation against the plaintiff for the exercise of his First

Amendment rights in the past as well as the continuing threat of future retaliation for future disclosures. See, e.g., Givhan v. Western Line Consolidated School District, 439 U.S. 410, 417 (1979); Mount Healthy Board of Education v. Doyle, 429 U.S. 274, 283, 97 S. Ct. 568, 574 50 L.Ed. 2d 471 (1977).

(4) Continuing Violation. Plaintiff has alleged and this Court has decided that the "denial of equal pay" is a continuing violation. What the plaintiff now realleges is that his discharge claim was timely filed with the EEOC, on the basis that the denial of equal pay is a "continuing violation." See Exhibits 1 (p.5) and 14. As this Court has already held a new discriminatory act occurs every time a separate paycheck is issued which pays a black less than a white doing similar work. In this case the charge was filed May 30, 1978 and the last paycheck was for the period ending June 30, 1978. See, e.g., Patterson v. American Tobacco Co., 586 F.2d 300, 304 (4th Cir. 1978). See also Exhibits 2 and 9.

(5) Summary Judgment Motion. The district court denied Plaintiff's Motion for Summary Judgment (Ex. 10), allegedly because "This motion is untimely because, to date, no discovery has been taken." (Ex. 16). The district court conveniently ignored its original order dismissing this case (Ex. 8). That dismissal was promulgated despite the fact that no discovery had been taken AND, what is more important, despite the plaintiff's plea"... it would be improvident for this Court to grant dismissal .... unless and until it is demonstrated by discovery proceedings or otherwise ..." (Ex. 6, p. 8). In its latest denial the dismissal by the district court apparently on its own motion, in that the defendants did not respond to the Plaintiff's Motion for Summary Judgment. See Exhibits 10, 11 and 15 (exp. p. 23 and 24). Thus, the district court abused its discretion when it failed to require compliance with Rule 56(e) of the Federal Rules of Civil Procedure.

(6) Amending Complaint. The district court denied Plaintiff's Motion to Amend (Ex. 14),

allegedly because it had previously dismissed the same claims with prejudice (Ex 16). The district court conveniently ignored Ex. 14 and rule 15 of FRCP ("leave should be freely granted to cure improper jurisdictional allegations" and "amendments of the pleadings are to be freely granted, even after a complaint has been dismissed").

4. Do you feel that there are any other reasons why the district court's judgment was wrong? (Continued)

(1) The facts of record in this case, especially Exhibits 7, 11 and 16 demonstrate a clear pattern of the district court's "singling out the plaintiff" for adverse decisions SOLELY because he has opposed unlawful employment practices. This is clearly shown by Exhibit 7, pages 17-20.

(2) Other examples of abuse of discretion and/or improprieties by the district court:

a. The Order announcing the time which the defendants had to respond to Plaintiff's Motion for Summary Judgment was not enforced. See Ex. 11.

b. Statements regarding the alleged mailing of the Scheduling Order to the plaintiff

were clearly not supported by the facts of record. See Exhibit 15, p. 2-3, 20 and esp. 21; and Exhibit 18.

c. The district court's decision to dismiss Plaintiff's Amended Complaint is a clear abuse of discretion (Ex. 16) and is a clear violation of Rule 15, FRCP.

d. The district court's decision to deny Plaintiff's Motion for Summary Judgment, allegedly because no discovery had been conducted in the case is a clear abuse of discretion. This decision would, if implemented in the plaintiff's favor or carried to its logical conclusion, revoke the Order at Exhibit 8 because the dismissal in favor of the defendants (Exhibit 16) was also rendered without the benefit of discovery.

In summary, the district court's Order of June 1, 1989 (Ex. 16) is contrary to applicable case law mentioned above and as listed at Ex. 17. Also, the decision is contrary to Rules 56(a) and 56(e) of FRCP.

5. What action do you want the Court to take? (Continued)

The district court dismissed plaintiff's retaliation claim allegedly because he failed to exhaust the required administrative remedies. Likewise the Title VI claim was dismissed. Also, the discharge claim was dismissed allegedly because it was not timely filed with the EEOC. The district court conveniently ignored two important facts. Namely:

(1) The discharge claim was properly before the court on the basis of Zipes.

(2) The retaliation claim was properly before the court as a result of Zipes AND because it grew out of the charge of denial equal pay (a continuing violation). See, e.g., Sanchez v. Standard Brands, Inc. 431 F.2d 455, at 466 (5th Cir. 1970).

6. Oral Argument.

(1) Since filing the EEOC charge in this case on May 30, 1978, the plaintiff has not been able to obtain employment with ANY of the more than 6,000 acute care hospitals in America in ANY jobs; from clerk typist to president. From this fact one

must logically conclude that there exist major concerted actions to deny the plaintiff equal employment opportunity.

(2) Accordingly, appellant respectfully and urgently asks for an opportunity to present oral argument to this Court to clarify ANY and ALL concerns which will support the allegations contained in this case.

Respectfully submitted,

/s/Curtis L. Wrenn, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed via U.S. mail, postage prepaid, on the 3rd day of August, 1989, to Robert B. Barnhouse, Esq., 1100 Charles Center South, 36 South Charles Street, Baltimore, MD 21201.

/s/Curtis L. Wrenn

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CURTIS L. WRENN,

Plaintiff,

CIVIL NO
HAR-82-2044

vs

G. BRUCE McFADDEN, ET AL.,

Defendants.

PLAINTIFF'S MOTION FOR LEAVE OF COURT TO FILE THE WITHIN MOTION FOR SUMMARY JUDGMENT IN HIS FAVOR

1. COMES NOW the plaintiff, Curtis L. Wrenn, and moves this Court to grant him permission to file the within Motion for Summary Judgment in his favor.

2. The Motion for Summary Judgment is based on the complaint, amended complaints, pleadings, incorporated exhibits and records on file in the Court, and those exhibits incorporated herein expressly by reference. The motion is further based on the plaintiff's statement of material facts as to which there is no genuine issue, and plaintiff's memorandum of points and authorities in support of his motion for summary judgment.

3. Plaintiff respectfully submits that there are no genuine issues as to any material fact in

this case and that he is entitled to summary judgment in his favor as a matter of law, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure. A memorandum in support is submitted.

MEMORANDUM IN SUPPORT

I. PLAINTIFF'S STATEMENT OF MATERIAL FACTS WHICH THERE IS NO GENUINE ISSUE.

1. Plaintiff is a Negroid American citizen, whose date of birth is February 14, 1930. He is well qualified in the profession of hospital and health care administration, by virtue of education, training and experience.

2. Defendant McFadden employed the plaintiff as Associate Director for Administration of the University of Maryland Hospital, in May 1976 at an annual salary of $35,000.00. Plaintiff was one of four associate directors who reported to McFadden. Following his completion of the required one year probationary period, the plaintiff was awarded "permanent" status and was given a merit increase in pay of $3,500.00.

3. On June 27, 1977 the plaintiff submitted a request to McFadden for an adjustment in his salary after he learned that he was paid less than the white males associate directors whose positions entail less responsibilities. The request was denied and plaintiff was fired. See Appendix A of

Exhibit 1.

4. The plaintiff filed a charge of unlawful employment discrimination with the EEOC on or about May 27, 1978, in which he alleged, among other things, that "The University Hospital . . . has an institutionalized practice of paying Blacks and females less than white males, for comparable work" (page 5, Appendix B of Exhibit 1). Plaintiff was maintained in a discriminatory wage system from at least June 27, 1977 to June 30, 1978.

5. The foregoing "facts" are incorporated herein expressly by reference as though fully restated.

II. PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION FOR SUMMARY JUDGMENT IN HIS FAVOR.

1. This is a civil action instituted by the plaintiff against the defendants under the Equal Employment Opportunity Act of 1972. The gravamen of plaintiff's claim alleges a violation of rights, privileges and immunities secured to him by the Constitution and laws of the United States,

including but not limited to the First and Fourteenth Amendments and Section 704(a) of the EEOC Act.

2. Plaintiff's core grievance is that he is a victim of disparate treatment, in violation of 42 USC 2000e-3(a), in that he was unlawfully denied comparable wages for comparable work, and that he was discharged for "opposing" the perceived unlawful employment practices of the University of Maryland Hospital (UMH). That is, the plaintiff exercised his First Amendment right and requested comparable wages for comparable work, a request made to oppose and eliminate a UMH's practice of paying Blacks less than white males doing comparable work. In retaliation for the plaintiff's exercise of his First Amendment right, McFadden called Wrenn into his office and asked him to resign, and when he refused he was fired (pages 2 and 3, Appendix A of Exhibit 1). McFadden never informed the plaintiff of the "specific" reason for the denial of his request for pay adjustment nor was the plaintiff granted a hearing, in violation of his Fourteenth

Amendment right.

3. Plaintiff's request to McFadden of June 27, 1977 (Appendix A of Exhibit 1) was a lawful exercise of his First Amendment right. See, e.g., Given v. Western Line Consol School, 439 U.S. 410, 99 S. Ct. 693, 58 L.Ed.2d 619 (1979), where the Court states: "constitutional freedom of speech is not lost to a public employee merely because he arranges to communicate privately with his employer rather than to spread his views before the public." Plaintiff's expression concerning a Black person being paid less than a white person for comparable work, is directly related to a matter of political, social and other concerns of the community, and therefore was a "protected activity" within the meaning of 42 USC 2000e-3(a). See, e.g., Pettway v. American Cast Iron Pipe Co., (CA Ala 1969), 411 F.2d 998, rehearing denied, 415 F.2d 1376.

4. 42 USC 2000e-3(a) provides in relevant parts that:
"It shall be an unlawful employment practice for an employer to discriminate against any of his employees . . . because he has opposed any practice made an unlawful employment practice by this subchapter . . ."

5. It is clear, based on the facts of record, the complaint, pleadings, exhibits and Exhibit 1, the plaintiff has established a prima facie case of retaliation for his opposition to the pay practices of UMH. A line of cases hold that to establish a prima case of retaliation (violation of 42 USC 2000e-3(a)), the plaintiff must show:

"(1) Statutorily protected expression (plaintiff exercised his First Amendment right and requested a salary adjustment in order to receive comparable wages to that of the white male associate directors);

"(2) An adverse employment action (plaintiff's request was denied AND he was fired); and

"(3) A causal link between the protected expression and the adverse action (the request for salary adjustment (protected expression) was made June 27, 1977 and the adverse action (denial of salary adjustment and the employment termination were communicated to the plaintiff in McFadden's office on July 11, 1977)."

See, e.g., Smalley v. City of Eatonville, 640 F.2d 765, 25 FEP 1059, 1061 (5th Cir 1981); Parker v. Baltimore and Ohio Railroad (D C Cir 1981), 652 F.2d 1012, 25 FEP 889.

6. In the case at bar the plaintiff respectfully submits that he is a member of a protected class, that he was qualified for the position of Associate Director for Administration and that his performance satisfied his employer's legitimate expectations, but despite his qualifications and performance he was dismissed. The employer never informed the plaintiff that his performance needed to be improved or that his performance was not satisfactory. Thus, the employer's acceptance of plaintiff's performance is sufficient to show satisfactory performance and is sufficient to withstand ANY attempt by the employer to now justify the firing on the basis of legitimate business necessity. See, e.g., Flowers v. Crouch-Walker Corp., (7th Cir 1977), 552 F.2d 1277, 1282-83.

7. Finally, the plaintiff submits that by

providing NO explanation for denying his salary adjustment request (page 3, Appendix A of Exhibit 1). McFadden's action did not meet the "clear and reasonably specific" standards articulated in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 253, 258, 101 S. Ct. 1089, 1093, 1096 67 L.Ed.2d 207 (1981).

8. Based on the foregoing, plaintiff is entitle to summary judgment as a matter of law.

III. CONCLUSION

Given the undisputed fact that plaintiff was denied his request for wages comparable to that of similarly situated white persons and that his employment was terminated in retaliation for making the request, and given the Determination of the EEOC (Appendix C of Exhibit 1) and given the decision of the Court of Appeals for the Fourth Circuit (Exhibit 2), there exists no genuine issues of material facts to be decided by this Court.

The plaintiff has established by a preponderance of evidence his entitlement to summary judgment in

his favor. WHEREFORE, plaintiff prays this Honorable Court will grant summary judgment in his favor. Further, that the Court will grant him the relief previously requested to make him "whole" for the defendants' unlawful employment practice.

Respectfully submitted,

/s/Curtis L. Wrenn, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was mailed to Robert B. Barnhouse, Esq., 1100 Charles Center South, 36 South Charles Street, via U.S. Mail, postage prepaid, this 2nd day of March, 1989.

/s/Curtis L. Wrenn

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CURTIS L. WRENN,

Plaintiff,

CIVIL NO
HAR-82-2044

vs

G. BRUCE McFADDEN, ET AL.,

Defendants.

AFFIDAVIT OF
PLAINTIFF

STATE OF NEW YORK)

) ss

COUNTY OF JEFFERSON)

I, Curtis L. Wrenn, being first duly sworn, deposes and says that I am the plaintiff in this case and that this affidavit is submitted in support of Plaintiff's Motion for Summary Judgment in his favor.

In early 1976 while I was employed by the Medical Center Hospitals, Norfolk, VA, I received a telephone call from G. Bruce McFadden (defendant in this case) who inquired of my interest and availability for the position of Associate Director for Administration, University of Maryland Hospital, Baltimore (UMH), MD. Mr. McFadden stated I had been

recommended to him by certain faculty members of the Medical College of Virginia-Virginia Commonwealth's Program in Hospital and Health Care Administration.

During the course of our conversation Mr. McFadden invited me to Maryland for an interview. I was interview by McFadden and members of his staff at UMH. Following that initial, McFadden visited me in Norfolk for a second interview. In early March I was offered and accepted the position, and reported for work in May 1976.

During my orientation I was informed that the salary for all associate directors was $35,000. I was also informed that I was subjected to a one year probationary period to be eligible for continued employment.

In May 1977 I was informed that as a result of my performance my personnel records would reflect that I had successfully completed the required probationary period and that I was therefore a "permanent" employee. I was also informed that as a result of my job performance I would receive the highest merit increase permitted by the State, i.e.,

10% or $3500.00 effective July 1, 1977.

In early June 1977 while serving as a member of the UMH Budget Committee, I learned that McFadden was hiring an associate director for finance and would start him at a salary higher than mine. A further review of the budget reflected that the two white male associate had an annual salary considerable higher than mine.

As a result of my review of the budget, on June 27, 1977 I submitted a letter to McFadden and requested an adjustment in my salary. I was called into McFadden's office on July 11, 1977 and was informed that my salary adjustment request was denied. McFadden asked me to resign. I declined to resign and McFadden informed me that my employment as Associate Director for Administration would be terminated in nine months, and that I would be receiving his decisions in writing. The correspondence is attached as Appendix A.

Following the receipt of McFadden's letters of July 11, 1977 I continued to work for UMH, performing duties assigned by McFadden. I continued

to be paid less than the two white male associate directors.

Although the state of Maryland did not recognize the due process right of "associate staff employees" I asked various Maryland officials to review and reverse McFadden's decisions. They declined to do so.

On or about May 27, 1978, while still employed by the UMH and while still being paid less than whites doing similar work, I filed a charge of employment discrimination by mail with the U. S. Equal Employment Opportunity Commission (EEOC) and the then U. S. Department of Health, Education and Welfare (predecessor to Department of Health and Human Services (DHHS)). The date stamped in the upper right hand corner of the charge face sheet indicates that the charge was received May 30, 1978 at 10:51 AM in the EEOC Baltimore District Office. The charge is at Appendix B.

The charge alleged, among other things, that "The University (of Maryland) Hospital still, however, has an institutionalized practice of paying

Blacks and females less than white males, for comparable work." Page 5 of Appendix B.

During the latter part of 1977 I was hospitalized as a result of a severe rapid weight loss. The diagnosis was acute thyroid problem, a problem the attending physicians attributed to extreme stress brought on by the job firing. Following my release from the hospital and my return to duty, McFadden visited me in my office and informed me that I did not have to comply with the nine month employment termination outlined in his letter to me of July 11, 1977 (page 2 of Appendix A), but rather I could remain with the hospital until I found employment. In June 1978 I was offered and accepted a position of Administrator, Anoka State Hospital , Anoka, MN. My last day of employment with UMH was July 1, 1978.

In early 1979 I was interviewed for the position of Associate Superintendent for Administration, Saint Elizabeths Hospital, Washington, DC. I was denied the position as a proximate result of a statement attributed to McFadden. See Appendix D.

I also learned that I was denied positions in hospital and health care administration by the Truman Medical Center, Kansas City, the University of California Hospital, San Francisco, and Vanderbilt University Hospital, Nashville, as a proximate result of statements by McFadden and other officials of UMH. I have also learned that UMH refused to provide an employment reference on my behalf to the New York State Office of Mental Health.

On or about June 23, 1982, the EEOC issued its Determination that "Examination of the evidence shows the following facts which indicate that there is reasonable cause to believe that the allegation (the Charging Party alleged that Respondent discriminated against him by denying him comparable wages for comparable work because of his race, Black) is true. See page 1 of Appendix C.

Subscribed to in my presence and Sworn to before me

this 2d day of March, 1989.

/s/Curtis L. wrenn

/s/Joan J. Hall
NOTARY 4943595
My Commission Expires:
10/31/90

Subscribed and sworn to before me this
2nd day of March, 1989.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN,

Plaintiff,

CIVIL ACTION NO
HAR-82-2044

vs

G. BRUCE McFADDEN, ET AL.,

Defendants.

AMENDED COMPLAINT WITH JURY DEMAND

I. Nature of the Claim

1. This is an action arising form certain acts, practices and courses of conduct resulting in racial discrimination and retaliation in employment against the plaintiff who is a Negroid American citizen.

2. Plaintiff has alleged that he was denied wages comparable to that of similarly situated white persons, in violation of the Constitution and laws of the United States, including but not limited to the First and Fourteenth Amendments, and Titles VI and VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 (42 USC 2000d and 2000e, et seq) (hereinafter Titles VI and VII).

II. Statement of the Case

3. The plaintiff was employed as the Associate Director for Administration at the University of Maryland Hospital from on or about May 6, 1976 to on or about July 1, 1978. Plaintiff was initially employed at an annual salary of $35,000, and received a raise to $38,500 upon completing the required one year probationary period. Following the successful completion of the required one year probation plaintiff was declared to be a "permanent" employee.

4. In June of 1977 plaintiff learned as a member of the Hospital's Budget Committee that the white male associates were paid more than he was, despite the fact that he had more responsibilities. Plaintiff submitted a request for a pay adjustment to Defendant McFadden. The request was denied and plaintiff's was given a nine month notice that his employment would be terminated April 1978 (Exhibit H). The termination date was unilaterally changed by Defendant McFadden in early January 1978 when he informed the plaintiff that, among other things, the

termination date was rescinded and that he (plaintiff) would be retained until such time as he found employment.

5. During the interim plaintiff's role was changed, including but not limited to the transfer of his three subordinates to one of the white male associates.

6. Following the discussion with Defendant McFadden in January 1978, plaintiff contacted the EEOC and HEW regarding filing charges of unlawful discrimination. Plaintiff mailed his charge of discrimination simultaneously to the EEOC and HEW. The EEOC's date stamp at the upper right corner of page one of Exhibit A clearly demonstrates that the charge was received on May 30, 1978. The EEOC issued its determination of "reasonable cause" on June 23, 1982.

7. The retaliation charge (violation of Title VII) was acknowledged by the EEOC at page 3 of Exhibit D.

8. Although the date HEW actually received the Title VI charge is not known, the policy of that

agency is to use the date the charge was received by the EEOC . Suffice to say HEW was taking action to process the charge as early as December 15, 1978 (Exhibit E, page 3). DHHS concluded the processing of the Title VI charge on January 26, 1986 (page 1 of Exhibit C), when it apparently signed an agreement with the defendants that included a requirement for them to recruit and hire a Black Hospital Administrator as a condition for continued entitlement to Title VI funds.

9. The plaintiff commenced this action in this Court in 1982. An amended complaint was filed (Exhibit G).

10. The plaintiff hired an attorney (Harvey Wasserman) to represent him. After more than a year of being the attorney of record, Wasserman filed no documents and/or pleadings. Consequently at the hearing on plaintiff's first amended complaint, plaintiff's claims were dismissed.

11. Exhibits A through H are incorporated herein expressly by reference as though fully rewritten.

III. The Claims

12. The plaintiff's reason for submitting this amended complaint is to insert and/or reinsert the basis for the claims originally submitted to the Court. Plaintiff hereby avers and/or reavers and alleges and/or realleges that the following are viable claims which ought to be heard by this Court:

a. Discharge claim (violation of Titles VI and VII).

b. Discharge claim (violation of the Constitution of the United States.

c. Retaliation claim (violation of Titles VI and VII).

13. The unlawful discharge claim (violation of Titles VI and VII).

a. This claim was previously presented to the Court in Exhibit G, pages 1, 3, and 4, paragraphs 5, 14, 17 and 21.

b. Plaintiff's discharge claim is predicated on the theory of "Continuing violation as stated by the Supreme Court in United Air Lines, Inc. v. Evans, 431 U.S. 553, 558, 97 S. Ct. 1885.

1889, 52 L.Ed.2d 571 (1977).

c. The support for plaintiff's claim is the Supreme Court's decision in Bazemore v. Friday, No. 85-93 and 85-428, (July 1986) where the Court held that "Each week's pay check that delivers less to a black than to a similarly situated white is a wrong actionable under Title VII, ..." Id. p. 8.

14. The unlawful discharge claim (violation of the United States Constitution; First and Fourteenth Amendments).

a. This claim was previously presented to the Court in Exhibit G, pages 3 and 6, paragraphs 14 and 32.

b. The essence of plaintiff's constitutional claim is that he was fired for exercising his First Amendment right of free speech when he requested a salary adjustment (Exhibit H), and that he was denied due process, including but not limited to a statement of the reason for the firing and the denial of a hearing, in violation of the Fourteenth Amendment (Exhibit D, page 4).

c. See, e.g., Givhan v. Western Line

Consol. School, 99 S. Ct 693 (1979) where the Court held:

> "Constitutional freedom of speech is not lost to public employee merely because he arranges to communicate privately with his employer rather than to spread his views before the public." Id. 693

d. See also, Hernandez-DeValle v. Santa-Sponte, 440 F. Supp. 254 (1977), where that court, citing Bell v. Burson, 402 U.S. 535, 91 S. Ct. 1586, 29 L.Ed.2d 90 and Board of Regents v. Roth, 408 U.S. 92 S. Ct. 2694, 33 L.Ed.2d. 570, held that:

> "While there is no constitutional right to public employment as such . .. a property interest protectable under the Fourteenth Amendment can be created by a specific statutory or contractual entitlement, by implied contract, or by "common law" of a particular industry or a particular plant. . . .It appears from the evidence submitted in this case the plaintiff's position was classified as "permanent". . . Such classification and permanency constitute a sufficiently consolidated statutory right to warrant federal procedural safeguarding." Id. 259.

e. Plaintiff respectfully submits that his request for pay adjustment at Exhibit H was a First Amendment expression regarding a matter of important

public concern. See, e.g., Connick v. Myers, U.S. S. Ct. 1684, 1690n. 7,75 L.Ed.2d 708 (1983).

16. Retaliation claim (violations of Titles VI and VII).

a. This claim was previously presented to the Court in Exhibit G, pages 2, 3, 4, and, paragraphs 6, 14, 21, 24 and 29.

b. Plaintiff's retaliation claim is based on continuing acts of retaliation, including but not limited to denial of his pay adjustment request, termination of employment, and continuing adverse post employment reference.

c. In pertinent parts Section 704(a) of Title VII (42 USC 2000e-3(a)) provides that:

> "It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because he has opposed any practice made an unlawful employment practice by this subchapter. . .

However, Section 704(a) is not confined to situations in which the parties are engaged in formal proceedings, but rather entends to forbid discrimination against applicants or employees for

attempting to protest or correct allegedly discriminatory conditions of employment." McDonnell Douglas Corp. v. Green, 411 U.S. 792, 796, 93 S. Ct. 1817, 1821, 36 L.Ed.2d 668 (1972).

d. It has been held, for example, that taking an adverse action against an employee for exercising rights protected by the Constitution and laws of the United States is violative of 42 USC 2000e-3(a). See, Pettway v. American Cast Iron Pipe Co., 411 F.2d 998, 1005 (5th Cir., 1969).

e. It has also been held that providing an adverse employment reference to a prospective employer is also violative of 42 USC 2000e-3(a). See, e.g., Pantchenko v. C.B. Dodge Co., (17 EDP 8549) 581 F.2d 1052, 1055 (2d Cir., 1978) (per curiam) (recommendation); Rutherford v. American Bank of Commerce (15 EPD 7945) 565 F.2d 1162, 1165 (10th Cir., 1977) (reference).

f. The primary issue in this case is whether the plaintiff exhausted the required administrative remedies in connection with his retaliation claims. More specifically, the issue

whether the facts in this case, i.e., the plaintiff filed the charge at Exhibit A and the EEOC acknowledged that the plaintiff had filed a retaliation claim (p. 3 of Exhibit D), are sufficient to overcome ANY allegation that the plaintiff has not exhausted his required administrative remedies.

g. Plaintiff respectfully submit that although he filed a retaliation charge with the EEOC and DHHS, that the filing of a retaliation administrative claim is not a jurisdictional prerequisite for pursuing such a claim in this Court. This is especially true when, as in this case, a plaintiff alleges systemic continuing acts of discrimination. See Exhibit A, page 5. See, e.g., Zipes v. TWA, Inc. 455 U.S. 385, 71 L.Ed.2d 234, 102 S. Ct 1127 as cited by this Court in Thornton v. Chrysler Corp., 581 F. Supp. 86 (1983).

h. Although the EEOC acknowledged plaintiff's retaliation claim, such acknowledgment is not relevant. What is relevant is that plaintiff's retaliation charge was in fact like or

reasonably related to the allegation of the charge and growing out of the charge'. Sanchez v. Standard Brand, Inc., (CA 5 1970), 2 FEB Cases 788.

1. Finally, plaintiff submits that on the basis of the decisions in Evans and Bazemore, a legion of cases would hold that he is not required to exhaust the administrative remedies in connection with his retaliation and/or systemic discrimination claim, before pursuing a claim in federal courts. See the following examples:

(1) Gupta v. East Texas State University, 654 F.2d 411, 414 (5th Cir. 1981).

(2) Clark v. Olinkraft, Inc., (CA 5, 1977), 15 FEP Cases 374.

(3) Hill v. AT & T Technologies, Inc., 731 F.2d 175 (4th Cir.)

(4) Macellaro v. Goldman, 643 F.2d 813 (D. C. Cir., 1980) where the court held that "where there exists current discrimination or a continuous chain of discriminatory acts, the courts have treated the entire course of conduct as a continuing statutory violation."

(5) Macklin v. Spector Freight Systems, Inc., Case Nos. 71-1259, 71-1517 and 71-1620, (D. C. Cir., 1973), where the court stated "the claim that the action was not timely commenced is not well taken because one isolated incident is not being challenged but rather an entire allegedly discriminatory system."

CONCLUSION

Based upon the foregoing, the plaintiff submits that he has presented a prima facie case of unlawful employment discrimination, in violation of the Constitution and laws of the United States, including but not limited to the First and Fourteenth Amendments, and The Civil Rights Act of 1964 as amended by The Equal Employment Opportunity Act of 1972. In addition, plaintiff submits that but for his exercise of his First Amendment right in protesting perceived unlawful pay discrimination by requesting a pay adjustment, he would not have been fired. See, e.g., Kauffman v. Sidereal Corp. (CA Or., 1982), 677 2d 767, BNA FEP Cas 1605.

Plaintiff prays that this case will be in every

way expedited by the Court, and that he will be awarded "full" relief including, but not limited to backpay and lost benefits.

Respectfully submitted,

/s/Curtis L. Wrenn, Pro Se
P. O. Box 203
Fort Drum, NY 13603
Tel: (315) 772-4021

UNIVERSITY OF MARYLAND HOSPITAL

22 SOUTH GREENE STREET
BALTIMORE, MARYLAND 21201

OFFICE OF THE DIRECTOR

June 27, 1977

Mr. G. Bruce McFadden
Director
University of Maryland Hospital

Dear Mr. McFadden:

This is in response to your presentation at the Associate Director's Meeting of June 24, 1977, during which you discussed your revised organizational chart.

This is to let you know I will support your stated purpose, that is "a need to streamline the organization". I say this even though my role, as defined by you, would change significantly. In essence what I am saying, I will continue to support our efforts to provide quality patient care in a cost effective manner.

I would like, however, to mention one aspect of your change which is causing me some grave concern. On condition of my acceptance of my present position was that the three Associate Directors would be at the same salary level. I have since learned that the salary approved for the two other Associates will be substantially higher than mine effective July 1, 1977.

In your discussion of proposed organizational change, you did not mention salaries. I request that the subject of salaries be considered an integral part of any discussion regarding organizational structure. In this connection, I am

by this letter requesting that my salary be adjusted to a level of not less than the highest paid of the other Associates. It is further requested that this adjustment be made effective July 1, 1977.

Very truly yours,

/s/Curtis L. Wrenn
Associate Director

CLW/cdt

UNIVERSITY OF MARYLAND HOSPITAL

22 SOUTH GREENE STREET
BALTIMORE, MARYLAND 21201

OFFICE OF THE DIRECTOR

July 11, 1977

Mr. Curtis L. Wrenn
Associate Director for Administration
University of Maryland Hospital

Dear Curtis:

This will serve to summarize our discussion from our meeting this morning, July 11, 1977.

In keeping with the Personnel policies of the University of Maryland for Associate Staff, you are hereby given notice that your employment will be terminated in nine months from this date.

During the interim period, you will be expected to perform all assigned duties in a manner consistent with the position, under the existing, or proposed organizational, framework of the Director's Office.

Your last date of employment will be April 11, 1978, unless you wish to submit your termination earlier.

Sincerely yours,

/s/G. Bruce McFadden
Director

MLB/gbm

UNIVERSITY OF MARYLAND HOSPITAL

22 SOUTH GREENE STREET
BALTIMORE, MARYLAND 21201

OFFICE OF THE DIRECTOR

July 11, 1977

Mr. Curtis L. Wrenn
Associate Director for Administration
University of Maryland Hospital

Dear Curtis:

This will respond to your letter of June 27, 1977 regarding salary adjustment, and so summarizes my comment from this morning.

Your request for a salary adjustment is not approved. In keeping with your request, however, this note will serve as a request to the Director of Personnel, Mr. Ronald J. Baril, to more closely examine these second-level salary components, and advise me officially as to the nature of our current levels as being in keeping with other hospital institutions.

You should feel free to discuss this with Mr. Baril at your convenience.

Sincerely,

/s/G. Bruce McFadden
Director

MLB:gbm
cc: Mr. Ronald J. Baril
Director of Personnel

EMPLOYMENT DISCRIMINATION COMPLAINT FORM

1. NAME (MR./MS.) Curtis L. Wrenn

STREET ADDRESS: 4006 Loch Raven Boulevard

CITY AND STATE: Baltimore, Maryland

ZIP CODE: 21218

PHONE NUMBER (AREA CODE) 301-243-0901

2. In the event this office is unable to locate me to discuss this complaint, the following person knows where to contact me:

NAME (MR./MS.): Mr. Thomas E. Wrenn

CITY AND STATE: 453 West 6th Street
Birmingham, Alabama

ZIP CODE: 35204

PHONE NUMBER: 205-324-6948

3. Were you discriminated against because of (Please circle one or more, if appropriate):

(Race) or Color Religion Sex National Origin

4. Who do you allege discriminated against you? Give the name of the institution or employer, (e.g., School District, Vocational-Technical School, Headstart Program, Etc.)

NAME: G. Bruce McFadden, Director of University of Maryland Hospital

STREET ADDRESS: 22 South Greene Street

CITY AND STATE: Baltimore, Maryland

ZIP CODE: 21201

ORGANIZATIONAL UNIT: UNIVERSITY OF MARYLAND

5a. Have your filed this complaint with any other Federal, State or Local Government Agency?
(YES) NO

MONTH May DAY 25 YEAR 1978

If not, do you intend to file with another Agency? (YES) NO

AGENCY: The Honorable Eleanor Holmes Norton

STREET ADDRESS: The U.S. Equal Employment Opportunity Commission

CITY AND STATE: Washington, D.C.

ZIP CODE: _____

b. Have you pursued resolution of your complaint through the internal grievance procedure at your institution? YES (NO)

If the answer is "Yes", what is the status of your complaint?

_____

_____

_____

_____

6a. On what date(s) did the action complained of occur? June 27, 1977

b. When were you first aware that you were being treated in a discriminatory manner?

June 27, 1977

_____

c. What is the most recent date at which you experienced that alleged discriminatory

treatment? June 30, 1978

7. Describe the allegedly discriminatory conduct. In describing such conduct, it may be helpful to consider the following factors:

   a. Are other members of your class (same race, sex, or national origin) treated in the same allegedly discriminatory manner?

   b. Have individuals of the opposite sex, or majority race been treated differently from you in this matter or other matters of this kind?

   c. Has the respondent facility (agency) given you any explanation for its conduct which you believe to be discriminatory?

   d. How do you view the explanation given to you by the respondent health facility (agency)?

Please see attached continuation sheet.

(If more space is required, attach additional sheets)

8. Submit any written materials, data, or other documents which you think are relevant to your complaint.

/s/Curtis L. Wrenn 5/27/78

Encl
Personal Resume
Correspondence

Continuation of Item 7

Curtis L. Wrenn
vs.
University of Maryland Hospital

Most hospitals in America have established practices and patterns of discriminating against Black Hospital Administrators. This is even more pronounced among major university state owned teaching hospitals, such as the University of Maryland. Because of the size of such institution they tend to influence the personnel practices in their community. For example, soon after I was hired at the University of Maryland, a Black Hospital Administrator was hired by Johns Hopkins, our major competitor.

The discriminatory policies of these institutions have become so institutionalized that barriers have been created for blacks that do not exist for others. The discrimination is usually in one or more of the following forms:

(1) Recruiting. Although the institution may profess to be an "equal opportunity employer," the facts tend to refute the slogan.

(2) Hiring. Most hospitals, especially major teaching hospitals, do not have even one Black Hospital Administrator.

(3) Education. It is extremely difficult for a Black Administrative Resident to obtain a residence in a major teaching hospital.

(4) Promotion. Very very few Blacks are ever promoted to second Level (Associate) in a teaching hospital, and I am not aware of any at the top or Director.

(5) Pay. Black Hospital Administrators, if hired, are usually paid less than other administrators.

Since my employment by the University of Maryland on May 1, 1976, I have personally been able to take positive action regarding all of the above, except item 5 (pay). There is another Black Administrator on our staff (hired by me); last year we had our first Administrative Resident from Howard University (a Black female); and in 1976 we promoted a Black from Administrative Assistant to Assistant Director.

The University Hospital still, however, has an institutionalized practice of paying Blacks and females less than white males, for comparable work. For example, there are four associate hospital directors reporting directly to the Hospital Director, Of these, the Black (myself) and the female's salary is less than the other two. This exists even though one of the other two is the most junior in terms of years of service.

On June 27, 1977, I requested that my salary be adjusted to not less than that of the other two associates (at the time the director of Nursing did not carry the title of "Associate", although she was performing in that capacity.) My request was not only disapproved, I was requested to submit my resignation that day (July 11, 1977). When I refused to resign, I was informed that I would receive a letter that day advising me of the termination of my employment. I asked for the reason and Mr. McFadden's response was "in accordance with the Associate Staff Policy" (which permits termination with proper notice (nine months) without having to give a reason or justification for the dismissal.

In January, I was advised verbally that my termination date was extended to July 1, 1978. Moreover, during the interim I would serve as a "staff person" to the Director. My name and function (Associate Director for Administration) have since been removed from the organizational chart.

The State of Maryland does not recognize the right of Associate Staff Members to file a grievance. Nor

is there an appeal mechanism for employment termination.

Since the University receives an inordinate amount of public funds, this complaint is filed with your office. I hereby ask that the University of Maryland be ordered to discontinue its discriminatory pay practices against blacks and women. And that the University be ordered to adjust my salary retroactive to July 1, 1977 as previously requested. Finally, that the University be ordered to restore me to my former position of Associate Director for Administration with the same rights, privileges, role, responsibility, authority, etc. previously enjoyed.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Baltimore District Office
711 West 40th Street, Room 210
Baltimore, Maryland 21211

CERTIFIED MAIL NO. _____
Charge No. 033781246

Curtis L. Wrenn
Toledo, Ohio

Charging Party

and

University of Maryland Hospital
Baltimore, Maryland

Respondent

DETERMINATION

Under the authority vested in me by the Commission's Procedural Regulations, I issue, on behalf of the Commission, the following determination as to the merits of the subject charge.

All jurisdictional requirements have been met.

The Charging Party alleged that Respondent discriminated against him by denying him comparable wages for comparable work because of his race, Black. Examination of the evidence shows the following facts which indicate that there is reasonable cause to believe that the allegation is true:

Charging Party was employed by the Respondent on May 1, 1976 as Associate Director of Administration. On July 11, 1977 Charging Party

Party received a letter of termination effective April 11, 1978. Charging Party states that in January, 1978, he was advised verbally that his termination date was extended to July 1, 1978. Additionally he states he was paid a lower salary than two (2) White male Associate Hospital Directors; one of whom he asserts is junior in terms of years of service. The Charging Party states that when he requested that his salary be adjusted to not less than that of the other two (2) Associates, his request was not only disapproved, but he was asked to submit his resignation that day. Then he asked for a reason, the Director of University of Maryland Hospital's response was "in accordance with the associate Staff Journal".

Charging Party believes he has been discriminated against because of his race (Black) with respect to wages and termination for the following reasons: (a) the University has a practice of paying Blacks and females less than White males for comparable work; (b) he was asked for his resignation immediately after his request for a salary adjustment comparable to that of the other two (2) White male Associates; (c) he was the only Black Associate Director employed by the Hospital. His duties and responsibilities were greater than that of the White Associates with less pay.

The Commission's investigation only addresses the allegation of wage discrimination. The discharge issue is untimely filed and as such, is beyond the jurisdiction of the Commission. The Charging Party was notified of his impending termination on July 11, 1977. The charge was not brought to the attention of the Commission until July 5, 1978 - well beyond the 300 day filing period.

It is undisputed that Charging Party began his employment as Associate Director for Administration on May 1, 1976. His duties and responsibilities were as follows:

UNIVERSITY OF MARYLAND HOSPITAL - Baltimore, Maryland - Associate Director of Administration for this 864 bed facility, one of the country's oldest and largest teaching hospitals.

Responsibilities include day-to-day operations such as: acting as preceptor for two Administrative Residents: directing, coordinating activities of four Assistant Directors - Assistant Director for Ambulatory (Clinics, Emergency Service, Family Practice), Assistant Director for General Services (housekeeping, Space Management, Physical Plant Maintenance, Renovations, Purchasing, Security, Materials Management and Dietary), Assistant Director for Professional Services (Laboratories, Radiology, Rehabilitation Medicine (FT and OT), EKG, EEG, Accreditation and Licensure), and Assistant Director for Human Resources Development (CPR, Patient Education, Employee Orientation, Management Development and Cost Containment Seminars) - serve as member of various Medical Staff Committees including by-laws, Utilization Review, Patient Care and Medical Records. Coordinate facilities planning, including major renovation project in excess of $5 million. Member of Hospital Budget Committee, and responsible for reviewing and maintaining budget in excess of $40 million. Chairman of Hospital Space Committee that is responsible for assigning and allocating hospital space.

As of March 1, 1977 the Administrative Organization at the University of Maryland Hospital was as follows:

Assistant Director	Hospital Director	Auxiliary
		Public Relations
		Institutional Planning

Assoc. Director Admin- istration	Personnel	Assoc. Director Finance & Systems	Assoc. Director Clinical Affairs	Assoc. Director Patient Service
Charging Party		White Male	White Male with M.D.	White Female

As of January 1, 1978 the Administrative Organization at the University of Maryland Hospital was as follows:

Chancellor

Administrative Asst. Planning		Personnel
Auxiliary	Director	Assistant Director Social Work Medical Records
University Relations		
Assoc. Dir. Clinical Affairs	Assoc. Dir. Nursing	Assoc. Dir. Finance & Systems
White Male with M.D.	White Female	White Male
		Assistant Director General Services

It must be noted that Charging Party's name and function (Associate Director for Administration) has been removed from the organizational chart and the record does not indicate that Charging Party's duties were absorbed by another Associate Director. The record reveals that the State of Maryland does not recognize the right of Associate Directors to file a grievance, nor is there an appeal mechanism for employment termination.

The record also reveals that a presentation was made at a meeting on June 24, 1977, with the Associate Directors in attendance. At this time the Director discussed his revised organizational chart. In a letter dated June 27, 1977 Charging Party wrote a letter to the Director expressing his support of the stated purpose, that is a need to streamline the organization, even though Charging Party's position as defined by the Director would change significantly. Charging Party stated he would continue to support efforts to provide quality patient care in a cost effective manner. Charging Party stated that he had learned that the salary approved for the two other Associates would be substantially higher than his, effective July 1, 1977. Charging Party also stated to the Director that in his discussion of proposed organizational change there was no mention of salaries. He then requested that his salary be adjusted to a level of not less than the highest paid of the other Associates. Charging Party further requested that this adjustment be made effective July 1, 1977.

With regard to Respondent's written policy as it would pertain to Charging Party, there is no formal policy regarding employee evaluations.

Performance issues are usually dealt with informally and verbally between an Associate Director and his or her supervisor.

In a letter dated December 5, 1978, the Respondent wrote to the Commission indicating that Charging Party had been terminated in accordance with the Personnel Policies and Rules for Associate staff employee of the University. Investigation shows that these policies and rules are not applicable for Associate Directors but associate staff employees which are defined as those professional positions which apply to aspirants to faculty status.

With regard to the question of establishing whether Charging Party was treated the same as or different from the comparable in the contest of the practice or policy, Respondent submitted the following:

The following criteria are considered by management during the process of determining individual salaries of Associate Directors of the hospital.

a. Market worth of the job - "external equity" - by utilizing market survey data of comparable jobs at comparable organizations, a market worth of the job is determined. This is reflected at UNAB as a salary range for the job. For the Associate Director of Administration position the Director of Personnel determined the $28,000 to $42,000 was appropriate salary range. The organizations surveyed were:

   1. University Hospital and Clinics, Oklahoma City,

2. University of Michigan Hospital,

3. New York Medical Center,

4. Thomas Jefferson University Hospital,

5. University of Alabama,

6. University of Southern California Medical Center, and

7. George Washington University Hospital.

b. Worth of the job within the organization - "internal equity" - an analysis is done to determine the value of the job achieving the goal of the organization. In this case, the overriding goal of University of Maryland Hospital as defined by the Director, is "financial viability". As a State Agency, we are accountable to the State legislature; as a Hospital, we are accountable to the Maryland Cost Review Commission. The Associate Director's jobs are ranked according to their importance in achieving and maintaining "financial viability".

c. Specialized skills - an applicant differs to the organization - management may have to pay more for specialized skills, if it is determined that these will benefit the organization. After the skills, experience, and education of a candidate have been reviewed and that individual is interviewed and selected for a job offer, the actual salary offered will be dependent on "a" through "c" as well as two additional factors:

1. How much money it takes to attract that candidate?

2. Candidate's individual salary history - the general rule of thumb is that salary offered for Associate Staff positions (the category in which the Associate Director of Administration falls) should be 8-17% above the salary paid at the applicant's last position. Offers are occasionally made above that if any of the above criteria so dictate.

   Mr. Wrenn was asking $27,000 at his job prior to coming to Maryland. He started at University of Maryland Hospital at $35,000 - an increase of 22.9% over his previous salary.

Charging Party's salary when compared to the two White male Associate Directors is reflected as follows:

(White male), Associate Director for Finance

12/01/75	Associate Director for Finance $35,000
07/01/76	Associate Director for Finance $35,875
08/03/77	Associate Director for Finance $40,539
08/19/77	Resigned

Charging Party (Black male), Associate Director for Administration

05/03/76 Associate Director for Administration $35,000

07/01/77 Associate Director for Administration $38,500

06/30/78 Resigned

(White male), Associate Director for Clinical Affairs

07/01/75 Assoc. Director for Clinical Affairs $41,620

07/01/76 Assoc. Director for Clinical Affairs $43,285

08/16/77 Resigned

Explanatory notes: The Associate Director for Clinical Affairs is a Medical Doctor (M.D.) hence the higher salary.

Of the non-M.D., Associate Directors, only one had a higher salary than Charging Party. The Associate Director for Finance, obviously had a position which was most important in striving to accomplish the Hospital goal of "financial viability".

Charging Party, Associate Director of Administration, was responsible for assuring the smooth daily functioning of the Hospital. Management determined that his job was second in importance in reaching the goal of "financial viability".

The record does not show nor does the Respondent maintain that a Medical Degree is a prerequisite for the Clinical Affairs position. Respondent determined that Charging Party's job was second in importance to the Associate Director for Clinical Affairs without further explanation.

In a letter dated July 11, 1977, the Director of University of Maryland Hospital wrote to the Charging Party, in response to the Charging Party's letter to him of June 27, 1977 regarding salary adjustment. Charging Party was informed that his request for a salary adjustment was not approved but a request to the Director of Personnel would be made to more closely examine these second level salary components. The Director of Personnel in a letter dated November 16, 1977 stated that in his opinion that an appropriate salary range for the Charging Party's position would be $28,000 to $42,000.

In another letter, also dated June 11, 1977 the Director, University of Maryland Hospital wrote to the Charging Party, that in accordance with the Personnel policies of the University of Maryland for Associate Staff, he was thereby given notice that his employment would be terminated in nine (9) months from the date of the letter. Charging Party was also told that during the interim period, he would be expected to perform all assigned duties in a manner consistent with the position, order the existing or proposed organizational framework of the Directors Office.

Respondent records show that the Associate Director of the Hospital were paid in 1977 as follows:

White male (Finance)	$40,000	06/03/77

Charging Party (Asst. Dir of Ad.)	$38,000	07/01/77
White male (Clinical Affairs)	$43,000	08/18/77
White female (Nursing)	$33,000	07/01/77

Respondent states that the Associate Director for Clinical Affairs is a Medical Doctor (M.D.) hence the higher salary. Analysis of the evidence does not indicate nor does the Respondent state that a Medical Degree is a prerequisite for a position as an Associate Director. Analysis further shows Respondent has taken two positions with regard to Charging Party's responsibilities; first: that Charging Party was responsible for assuring the smooth daily functioning of the hospital, and second: that management determined that his job was second in importance in reaching the goal of financial viability. Respondent also stated that these two Associates had equivalent salary levels for the periods, however, the record does not reflect such a position.

The Commission has held that the language of Title VII makes plain the purpose for Congress to assure equality of employment opportunities and to eliminate those discriminatory practices and devices which have fostered racially stratified job environment to the disadvantage of minority citizens, CCH 3 FPB 8137;4EDP-7763. The Commission has also held that the right of the employee to prove his bias claims extend's beyond the initial showing of bias and subsequent rebuttal by the employer to allow the employee an opportunity to demonstrate that the employer's stated legitimate reason for rejection was actually a pretest for race bias.

Having determined that there is reasonable cause to believe that the charge is true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of the matter. A "Notice of Conciliation Process" is attached for your information; a representative of the Commission will contact each party in the near future to begin the conciliation process.

On behalf of the Commission:

/s/ Haywood Perry
/t/Dorothy E. Meade
District Director

June 23, 1982

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN, Individually and on behalf of all others similarly situated,

Plaintiff

vs.

G. BRUCE MCFADDEN, ET AL,

Defendants

CIVIL ACTION NO. JH 82-2044

PLAINTIFF'S FIRST AMENDED COMPLAINT

. . . . . .

PLAINTIFF'S FIRST AMENDED COMPLAINT

1. The jurisdiction of the Court is invoked pursuant to the provisions of 28 U.S.C. 1343(4), this being an action in equity and a suit authorized by law to be commenced by any person to recover damages for injury and to secure other relief under acts of Congress providing for the protection of civil rights.

2. The jurisdiction of this Court is also invoked pursuant to 28 USC Section 1331, this being a civil action wherein the matter in controversy exceeds the sum or value of ten thousand ($10,000.00) dollars, exclusive of interests and costs, and arises under the Constitution and laws of

the United States.

3. The jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Section 1981, this being an action brought by a Black plaintiff who has been denied the right to make and enforce contracts and the right to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, specifically with respect to contracts, compensation, terms, conditions and privileges of employment.

4. The jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Section 2000d, et.seq., this being an action brought by a Black plaintiff who has been denied the right to participate in Federally assisted programs on grounds of race.

5. The jurisdiction of this Court is also invoked pursuant to 42 U.S.C. Section 2000e-2, et.seq., this being an action brought by a Black plaintiff who has been denied equal pay for equal work (discriminated against with respect to his

compensation) and who has been discharged from employment because of his race.

6. The jurisdiction of this Court is also invoked pursuant to 42 U.S.C., the Civil Rights Act of 1964, as amended, Titles VI (Section 2000-d, et.seq.) and VII (Sections 703(a) and 704(a)), this being an action brought by a Black plaintiff who was denied equal pay and who was subsequently discharged from employment because he had opposed a practice made an unlawful employment practice by Titles VI and VIII.

7. The Defendant, University of Maryland Hospital, is a not-for-profit hospital, and is a resident of and/or doing business within and/or has its principal place of business within this judicial district.

8. All actions and/or failures to act of the Defendant Hospital herein, as alleged hereinafter, by and through its various officers, agents and/or employees, occurred within this judicial district.

9. The status of the Defendant Hospital, referred to in the preceding paragraph seven (7) is

the status of the Defendant at the present time and at all times up to the present time continuously since at least May 1, 1976.

10. The Defendant, G. Bruce McFadden (hereinafter "Defendant McFadden"), in all pertinent respects as set forth in this complaint, shall be deemed to have been acting in his individual capacity; alternatively, all actions and/or failures to act on the part of Defendant McFadden as set forth hereinafter shall be deemed to have been undertaken in his capacity as Director of Defendant Hospital.

11. The actions and/or failures to act on the Defendant Hospital by and through its various officers, agents and/or employees as alleged hereinafter, shall be deemed to have been performed and/or undertaken, or not performed and/or not undertaken, as the case my be, in their capacities as agents, officers and/or employees of Defendant, acting within the scope of their respective said authority and in furtherance of the business interests and purposes of the Defendant.

12. On or about June 27, 1977, Plaintiff submitted a request to Defendant McFadden requesting a salary adjustment.

13. On or about July 11, 1977, in separate letters signed by Defendant McFadden, Plaintiff was advised that: (1) "Your request for a salary adjustment is not approved", and (2) "you are hereby given notice that your employment will be terminated in nine months from this date".

14. Therefore, since on or about July 11, 1977, and up to the present time, and into the foreseeable future, the Plaintiff has and will be denied equal rights with his white contemporaries thereby discriminating against said Plaintiff with respect to the compensation, terms, conditions and privileges of employment because of his race and/or his opposition to a practice made an unlawful employment practice by Titles VI and VII, in violation of his rights under the Constitution of the United State and/or under 42 U.S.C. Section 1981, and/or under Titles VI and VII of the Civil Rights Act of 1964.

15. Said wrongful acts and conduct by the Defendants constituted a wanton, willful and reckless violation of 28 U.S.C., Section 1343(4).

FIRST CLAIM:

16. The allegations contained in the foregoing paragraphs one (1) through fifteen (15) are incorporated herein expressly by reference as though fully set forth.

17. The Defendants decision not to grant Plaintiff's request for salary and/or pay adjustment, and the subsequent dismissal and denial of a hearing, as alleged hereintofore, was based upon the Defendants intentionally discriminating against Plaintiff because of his race (Black), in violation of Title VII of the Civil Rights Act of 1964, as amended, and/or 42 U.S.C. 1981, and/or 42 U.S.C. Section 1983.

18. As a direct and proximate result of those actions and conduct on the part of the Defendants, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and

has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

SECOND CLAIM:

19. The allegations of law and fact contained in the foregoing paragraphs one (1) through eighteen (18) are incorporated herein expressly by reference as though fully set forth.

20. The University of Maryland is a recipient of federal funding, and is otherwise an employer subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-d, et.seq.

21. The Defendants decision not to grant Plaintiff's request for salary and/or pay adjustment, and the subsequent dismissal and denial of a hearing, as alleged hereintofore, was based upon the Defendants intentionally retaliating against Plaintiff for having opposed a practice made an unlawful employment practice by Titles VI and VII, which "retaliation" is violative of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-d, et.seq., and specifically violative of the

regulations promulgated pursuant thereto, 34 C.F.R. 1007(c).

22. As a direct and proximate result of those actions and conduct on the part of the Defendants, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

THIRD CLAIM:

23. The allegations of law and fact contained in the foregoing paragraphs one (1) through twenty-two (22) are incorporated herein expressly by reference as though fully set forth.

24. On or about February 13, 1979. Defendant McFadden did make the following statement to certain officials of the Sain Elizabeths Hospital "Mr. Wrenn has a soft, outward personality but he is quite aggressive. He is very interested in promoting the cause of his race and this sometimes comes first. We had a salary disagreement. He felt that his pay

should be the same as the other two Associate Directors (Finance and Medical); however, the decision was made that his position (Administration) be paid at a lower level. As a result, he filed an EEO complaint against the Hospital ...". As a direct and proximate result of the adverse reference from Defendant McFadden, Plaintiff was not hired for the position of Associate Superintendent for Administration.

25. The post-employment adverse action by Defendant McFadden as alleged hereintofore was based upon the Defendant intentionally retaliation against Plaintiff for having previously opposed a practice made an unlawful employment practice by Titles VI and VII and/or the Constitution of the United States of America, which "retaliation" is violative of Sections 703(a) and 704(a) of Title VII of the Civil Rights Act of 1964 and/or 42 U.S.C., Section 1981, and/or 42 U.S.C. Section 1983, and/or 42 U.S.C. 2000-d, et.seq.

26. As a direct and proximate result of those actions and conduct on the part of Defendant

McFadden, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

FORTH CLAIM:

27. The allegations of law and fact set forth in the foregoing paragraphs one (1) through twenty-six (26) are incorporated herein expressly by reference as though fully set forth.

28. The Defendant Hospital is a recipient of federal funding, and is otherwise an employer subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-d, et.seq.

29. The Defendants decision not to grant Plaintiff's request for salary and/or pay adjustment, and the subsequent dismissal and denial of a hearing, as alleged hereintofore, was based upon the Defendants intentionally retaliating against Plaintiff for having opposed a practice made an unlawful employment practice by Title VI of the

Civil Rights Act of 1964, 24 U.S.C. Section 2000-d, et.seq., and specifically violative of the regulations promulgated pursuant thereto, 34 C.F.R. 1007(c).

30. As a direct and proximate result of those actions and conduct on the part of the Defendants, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income and has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

FIFTH CLAIM:

31. The allegations of law and fact contained in the foregoing paragraphs one (1) through thirty (30) are incorporated herein expressly by reference as though fully set forth.

32. The defendants decision not to grant Plaintiff's request for salary and/or pay adjustment, and the subsequent dismissal and denial of a hearing, as alleged hereintofore, was based upon the Defendants intentionally retaliating

against Plaintiff, which "retaliation" constitutes a denial of Plaintiff's rights to make and enforce contracts (e.g., compensation, terms, conditions and privileges of employment) on an equal basis with his white contemporaries, in violation of his rights secured by the Constitution of the United States and by 42 U.S.C. Section 1981.

33. As a direct and proximate result of those actions and conduct on the part of the Defendants, Plaintiff has and will continue to suffer severe and intense emotional distress, mental anguish, humiliation, embarrassment and loss of income, and has and in the future will continue to incur expenses and legal fees in order to ensure the vindication of his legal rights.

Respectfully submitted,

/s/Curtis L. Wrenn PRO SE
c/o Shirley F. Wrenn
P. O. Box 603
Aberdeen Proving Grounds, MD 21005

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy

of the foregoing was duly served via ordinary U. S. Mail, postage prepaid, upon counsel for Defendants, James J. Mingle, Assistant Attorney General, The Munsey Building, 6th Floor, Seven North Calvert Street, Baltimore, Maryland 21202, this 9th day of September, 1982.

/s/Curtis L. Wrenn

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

CURTIS L. WRENN	*	
Plaintiff	*	
v.	*	CIVIL ACTION NO.:
G. BRUCE McFADDEN, et al.	*	HAR-82-2044
Defendant	*	

* * * * * * *

ORDER OF DISMISSAL

Upon consideration of Defendant's Motion to Dismiss Plaintiff's First Amended Complaint, the supporting and opposing memoranda filed by the parties, and oral argument presented at hearing,

It is ORDERED and ADJUDGED that the motion is granted and the First Amended Complaint is dismissed with prejudice because:

1. Plaintiff failed to exhaust any administrative remedy concerning his claims brought pursuant to Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. Subsection 2000d, with any federal agency responsible for enforcement of the nondiscrimination provisions and regulations of

this statute.

2. Plaintiff failed to file a timely charge with the Equal Employment Opportunity Commission regarding any claims brought pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Subsection 2000e, and he further failed to raise any claim of retaliation or to name any individual defendant in the untimely charge he did file.

3. Plaintiff's claims brought pursuant to 42 U.S.C. Subsection 1981 and 1983 are time barred since they were not filed within the limitation period specified in MD. CATS. & JUDE. PROC. CODE ANN. Subsection 5-101.

Dated this 22nd day of May, 1985

/s/Signature illegable
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 85-1664

Curtis L. Wrenn, individually
and on behalf of all others
similarly situated

Plaintiff-Appellant

v.

G. Bruce McFadden, individually and as
Director of the University of Maryland
Hospital; Albin O. Kuhn, Ph.D.,
individually and as Chancellor of the
University of Maryland at Baltimore;
Wilson H. Elkins, Ph.D., individually
and as President of the University of
Maryland; John S. Toll, Ph.D.,
individually and as President of the
University of Maryland; the Honorable
Blair Lee, III, individually and as
Acting Governor of the State of Maryland;
B. Herbert Brown, individually and as
Chairman of the Board of Regents of
the University of Maryland at Baltimore;
Donald W. O'Connell, individually and
as Vice President for General Administra-
tion of the University of Maryland; the
University of Maryland Hospital; The
University of Maryland; The State of Maryland,

Defendants-Appellees.

Appeal from the United States District Court for the District of Maryland, at Baltimore. John R. Hargrove, District Judge. (C/A No. 82-2044)

Submitted: March 30, 1988

Decided: September 6, 1988

Before HALL, WILKINSON, and WILKINS, Circuit Judges.

(Curtis L. Wrenn, Appellant Pro Se. Robert B. Barnhouse, Esquire, for Appellees.

PER CURIAM:

Curtis L. Wrenn, proceeding pro se, brought this action against the University of Maryland Hospital, the University of Maryland, the State of Maryland, and seven other defendants in their individual and official capacities, alleging claims under Title VII, 42 U.S.C. Subsection 2000e; Title VI, 42 U.S.C. Subsection 2000d; the Equal Pay Act, 29 U.S.C. Subsection 206(d); and 42 U.S.C. Subsections 1981 and 1983. The district court dismissed the action. It held that the Subsections 1981 and 1983 claims were stale, the Title VII claims were not timely filed with the Equal Employment Opportunity Commission (EEOC), the retaliation claims were not included in the EEOC charge, and the Title VI claims were subject to administrative exhaustion. This appeal followed.

We affirm the district court's dismissal of the Subsections 1981 and 1983 claims, the Title VI claim, and the Title VII wrongful termination and retaliation claims. The Subsection 1981, Subsection

1983, and Title VI claims were barred by Maryland's three-year statute of limitations. Md. Cts. & Jud. Proc. Code Ann. SS 5-101 (1984). See Goodman v. Lukens Steel Co., 55 U.S.L.W. 4881 (U.S. June 19, 1987)(Nos. 85-1626, 2010); Wilson v. Garcia, 471 U.S. 261 (1985); Gratten v. Burnett, 710 F.2d 160 (4th Cir.), aff'd, 468 U.S. 42 (1984). The wrongful termination claim was not timely filed with the EEOC. See Delaware State College v. Ricks, 449 U.S. 250 (1980); Price v. Litton Business Sys., 694 F.2d 963 (4th Cir. 1982). Wrenn failed to exhaust administrative remedies with regard to his retaliation claim. Although he argues on appeal that the district court may exercise ancillary jurisdiction over this unexhausted claim, we do not consider this argument because Wrenn failed to raise it in the district court. See Wilkins v. Whitaker, 714 F.2d 4, 7 n.1 (4th Cir. 1983), cert. denied, 468 U.S. 1217 (1984).

We affirm the district court's dismissal of all the defendants whose names did not appear on the face of the EEOC charge except G. Bruce McFadden.

Wrenn clearly named McFadden in the narrative of the EEOC charge filed on July 5, 1978, and McFadden made no claim of prejudice from Wrenn's failure to name him as a respondent. See Dickey v. Greene, 603 F. Supp. 102 (E.D.N.C. 1984).

We vacate the district court's dismissal of the Title VII wage discrimination claim. This Court has held that the denial of equal pay is "continuing," because it arises with the receipt of each "unequal" paycheck. Jenkins v. Home Ins. Co., 635 F.2d 310 (4th Cir. 1980). Wrenn received his last paycheck around July 1978. He filed his EEOC complaint on May 25, 1978. His claim thus was timely, and the case should be remanded for the district court to consider it.

Wrenn's motion for oral argument is denied. We find that the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED IN PART;
VACATED IN PART;
AND REMANDED.